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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/581,402	06/01/2006	Makiko Miyairi	06323/LH	3765
1933 7590 02/16/2011 HOLTZ, HOLTZ, GOODMAN & CHICK PC 220 Fifth Avenue 16TH Floor NEW YORK, NY 10001-7708			EXAMINER KIDWELL, MICHELE M	
			ART UNIT 3761	PAPER NUMBER
			MAIL DATE 02/16/2011	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/581,402	MIYAIRI, MAKIKO	
	<b>Examiner</b>	<b>Art Unit</b>	
	Michele Kidwell	3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 12 July 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1,2,4,5,7,8,10 and 11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,5,7,8,10 and 11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on July 12, 2010 has been entered.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1 – 2, 7 – 8 and 10 - 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Arora et al. (US 2005/0096616).

With reference to claims 1, 7 and 10, Arora et al. (hereinafter "Arora") discloses an absorbent article (abstract) comprising a top sheet (31) positioned in a face which is adapted to be brought into contact with a human body [0021];

a back sheet (35) positioned in a face which is opposite to the top sheet and is adapted to be brought into contact with underwear [0047]; and

an absorbent body (100) interposed between the top sheet and the back sheet (figures 2A - 2C);

wherein the back sheet may or may not include a colored area [0047] and may have a variable coating [0062] and wherein a light transmittance of light transmitted through the top sheet, the colored area of the back sheet and the absorbent body is 63% as set forth in col. 6 - 7, see especially Example A and [0066].

The difference between Arora and claims 1 and 7 is the explicit recitation that the back sheet includes a slightly colored area and a darkly colored area.

While these terms are considered to be relative, the examiner contends that Arora teaches multiple variations that allow for a variable transparency and/or thickness of the article as set forth in [0062]. Further, it is noted that a light transmittance of less than 15% may be zero and is therefore not required to be present at all.

It would have been obvious to one of ordinary skill in the art to provide a variation in color to modify the transparency of the article since Arora recognizes the advantages

with varying the transparency as set forth in col. 6 - 7. Further, since Arora anticipates the use of both a colored and non colored portion as set forth in [0047], a variation between the two extremes is within the level of ordinary skill in the art.

With respect to claims 2, 8 and 11, Arora teaches the invention substantially as claimed as set forth in the rejection of claims 1, 7 and 10.

The difference between Arora and claim 2 is the explicit teaching that the backsheet has a colored and non colored portion.

Arora teaches a backsheet which may or may not be colored as set forth in [0047].

It would have been obvious to one of ordinary skill in the art to provide a back sheet with a colored and non-colored portion because Arora anticipates the use of both as set forth in [0047]. Likewise, the use of either continues to result in a product with the claimed light transmittance as set forth in the rejection of claim 1, and therefore would not provide a patentable distinction between the claimed invention and the prior art since either article would have the claimed light transmittance.

Claims 4 – 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Arora et al. (US 2005/0096616) in view of Klemp (US 6,702,795).

The difference between Arora and claims 4 – 5 is the provision that an orientation identification is provided in the colored area.

Klemp teaches a backsheet (18) with an orientation identification as set forth in figures 6 - 7.

It would have been obvious to one of ordinary skill in the art to provide the backsheet of Arora with the orientation identification of Klemp since the inclusion of such provides aesthetically pleasing and practical instruction as taught by Klemp in col. 4, lines 26 - 37.

### ***Response to Arguments***

Applicant's arguments filed July 12, 2010 have been fully considered but they are not persuasive.

Initially the applicant argues the disclosure of [0003]. This argument is not persuasive as this section refers to typical absorbent articles and does not necessarily provide a motivation for Arora.

A "slightly colored area" and a "darkly colored area" are considered to be relative terms. As noted in the rejection Arora teaches multiple variations that allow for a variable transparency and/or thickness of the article as set forth in [0062]. Further, it is noted that a light transmittance of less than 15% may be zero and is therefore not required to be present at all.

It would have been obvious to one of ordinary skill in the art to provide a variation in color to modify the transparency of the article since Arora recognizes the advantages with varying the transparency as set forth in col. 6 - 7. Further, since Arora anticipates the use of both a colored and non colored portion as set forth in [0047], a variation between the two extremes is within the level of ordinary skill in the art.

If one of ordinary skill in the art is able to “at once envisage” the specific embodiment within the generic teaching, the embodiment is anticipated. See MPEP 2131.02.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 571-272-4935. The examiner can normally be reached on Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner’s supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michele Kidwell/  
Primary Examiner, Art Unit 3761